BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

In the Matter of	)		
	)		
Price Cap Performance Review	)	CC Docket No. 94-1	
for Local Exchange Carriers	)		

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SUMMARY

WilTel views this proceeding as fundamental to the future of the information highway. The potential of a ubiquitous fiber network will be squandered if its pricing fails to reflect the cost structure of this network. It is a virtual truism to observe that the ability of the public to make use of that infrastructure investment depends upon the cost and quality of access. Access lines are the link over which businesses and consumers will communicate with each other, and will obtain access to a diverse universe of new telecommunications and information services.

The Commission has responsibility for seeing that access service is priced in a way that meets the Communications Act's requirements for reasonable and nondiscriminatory rates. It is obvious that if access is priced too high, use of the national infrastructure will be chilled. But it is even more important that LECs not discriminate among network users in the recovery of common and other indirect access costs. This issue is of utmost importance, particularly as the relative weight of direct and common costs shifts in a fiber optic environment. The principal benefit of fiber technology is the virtually unlimited bandwidth available at little cost. If LECs have the flexibility to charge competing access users (such as different IXCs) different shares of common costs, then they can decide the relative ability of those access customers to succeed in the market. They thus can control the diversity of services available to consumers.

Unfortunately, the current LEC price cap system contains very little in the way of controls against price discrimination. That system relies only on the "basket and bands" approach adopted a year earlier for AT&T, even though price discrimination is a far more dangerous problem in the access marketplace. Fortunately, the absence of discrimination checks has not done serious damage

during the initial years under price caps. This is not to say that LECs have not used this flexibility to discriminate in certain situations such as dark fiber pricing. But at least during the past three years the "equal charge" rule has had the unintended effect of requiring LECs to recover common costs on a nondiscriminatory basis in the case of transport, the principal interstate access service susceptible to discrimination. Furthermore, LECs have not faced material competition, so their incentives to discriminate have been muted.

However, in this proceeding the Commission must correct the weaknesses in LEC price cap rules to prepare for a new environment in which LECs have an increasing ability and incentive to engage in substantial access rate discrimination. Access competition gives LECs new incentives to price discriminate, recovering common costs disproportionately from users lacking competitive choices. Such discrimination damages both opportunities for new competitive entry by CAPs, and competiton in markets such as long distance where access is a necessary input. And as the LECs expand their participation in information and long distance markets themselves, they will have new incentives to discriminate against their rivals in those markets. In these comments WilTel discusses steps that the Commission should take to enhance the ability of price caps to control LEC discrimination.

The Commission should recognize that the "improved" price cap rules coming out of this proceeding will be necessary for the indefinite future. For one thing, it remains to be seen how competition will develop in the interoffice transport market outside major metropolitan areas. But in any event, no competition is in prospect for access customers who require service on a tandem-switched basis.

Moreover, the Commission will have a continuing role in the future to assure that LECs make access available to their customer loops on a reasonable and nondiscriminatory basis. It is premature to conclude that local service competition actually will develop on a widespread basis given the legal and business hurdles that exist. But in any event, such competition would not reduce the bottleneck power of LECs over customer loops; it only means LECs may control fewer loops than they do today. IXCs and information companies would remain just as dependent on LEC access to reach the remaining LEC customer base.

As a result, the Commission still will have a role to play in preventing LEC access discrimination in a world of local competition. Indeed, LEC incentives to discriminate will be even greater. End users will choose loop vendors based on the price they pay for local service, not the price the loop vendors charge others for access. As a result, LECs will have an incentive to increase access prices to support their local service marketing in a competitive environment. This problem becomes even more serious when one recognizes that the LECs will be expanding their activities to compete more broadly with IXCs and others who depend upon access to their loops. It follows that the fundamental goal of this proceeding should be to adopt more effective rules to prevent LEC discrimination in the recovery of their common network costs -- both now and in the future.

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WilTel, Inc. ("WilTel"), by its attorneys, hereby submits its comments in response to the Notice of Proposed Rulemaking in the above-captioned proceeding, FCC 94-10 (released Feb. 16, 1994) ("Notice") considering changes to the price cap rules applicable to local exchange carriers ("LECs").

INTRODUCTION AND BACKGROUND STATEMENT

WilTel strongly supports the Commission's decision to make the price cap review proceeding an opportunity for a fundamental reassessment of both the goals and methodologies of LEC regulation. LEC access pricing will determine the ability of the nation to exploit the full potential of the information highway as a platform for diversity and economic growth. Hence, nothing could be more important than a rigorous review of the strengths and weaknesses of the price cap system itself.

Presumably no party would suggest that the price cap system is working perfectly. The Notice itself recognizes problems in the current rules, such as the failure to anticipate the substantial declines in LEC interest costs over the past four years. WilTel addresses other problems below, and undoubtedly other parties will make useful comments.

WilTel has followed the structure of the Notice in its comments below, responding to the Commission's specific questions about policy goals, baseline questions, and transitional issues. However, we wish to begin by emphasizing two general observations about the role of LEC price caps in the decade to come, and how the Commission should address this docket.

First, the Commission should recognize that the current price cap rules were not designed to address the unique problems of discrimination in the access market, so it is not surprising that they fail to do so satisfactorily. Yet discrimination in the recovery of common LEC costs will be the fundamental policy problem for the Commission as it attempts to ensure open access to the information highway to all consumers and vendors. This is particularly true as LECs themselves increasingly compete with others who must use LEC networks to communicate with end users. As a result, the LEC price cap review should focus on improvements to address this discrimination problem.

Second, LEC price caps should not be seen as a transitional device that can expire with the arrival of "access competition." Competition at the local service level will create new regulatory problems that make adequate LEC access price regulation even more important, and more difficult, than in the past. This is true even assuming that substantial local service competition actually materializes -- an empirical question that is still much in doubt.

Indeed, this is the docket to begin to recognize that the term "switched access competition" is essentially an oxymoron, and is most certainly not the same as local competition. Local competition is competition to be the subscriber's choice as local loop vendor. But once the subscriber has chosen its loop vendor, the "access business" of all companies that rely on the loop to reach the subscriber automatically must go to that loop vendor. It is only the transport portion of access service -- that is, from the carrier's point of presence to the first point of switching --

that is ever subject to the decision of the switched access customer (the IXC). Thus, "local competition" means competition for the subscribers' loop decision, while so-called "access competition" means living with that choice.

We are not disputing that "interoffice transport" competition may develop if expanded interconnection is priced at reasonable levels. In particular, dedicated transport services in large metropolitan areas may become highly competitive. But this competitive process will extend no further. Beyond the central office, the choice of vendor is the end user's, and fundamentally different competitive considerations will dominate the market and how it develops.

As a result, the elements of "local service" that are subject to the FCC's jurisdiction -- i.e., the "access" services that interexchange carriers and information providers rely upon to reach subscribers -- will not lose their "bottleneck" nature simply because there may be more than one choice enjoyed by the end user. Once the end user makes its choice, all other service suppliers will be as dependent upon this connection as they are on the LEC-provided loops today.

Put simply, it means little if a LEC controls fewer local loops in the future, whether because it has sold some of its customer base to another LEC, or lost it to a new entrant through competition. In either event the LEC still will have bottleneck power over other vendors who need access to the LECs' remaining loops, whether to market to the LECs' customers, or to terminate communications of others directed to those customers' telephone lines. Local competition thus represents a "dividing up" of the LEC bottleneck into a "multi-bottleneck" made up of the LECs and any new entrants such as cable companies. But each of these "local service companies" ("LSCs") will exercise market power over access to its respective local customer base. Such "access competition" does nothing to reduce access price.

This fact raises issues with respect to regulation of the new entrants, (again, assuming entry actually becomes feasible). But for present purposes, the Commission should recognize that its decisions in this docket will have continuing relevance for the foreseeable future because LECs will retain market power over their access lines and other parts of their networks even if limited competition for exchange subscribers develops. Hence flaws in LEC price caps must be given serious attention.

Indeed, the Commission should recognize that local competition creates new incentives for discrimination and uneconomic pricing. Because switched access is provided over the same line as local service, to sell "access" to IXCs and others, the LEC must first sell local service to the customer. Today this is not an issue because the customer has no choice. But as local service competition begins, the dynamic changes. In this environment, LECs will have incentives to overcharge for access in order to fund their competition to sell local loops (in addition to their preexisting incentive to capture monopoly rents).

This problem is exacerbated by the fact that the LECs (and the LSCs generally) will be competing with long distance and information services companies in new ways, and therefore will have additional incentives to discriminate in how they price access to those unaffiliated IXCs and others. It is impossible, for example, to imagine how RBOCs could safely be allowed to provide interLATA services unless price caps and other tools are improved adequately to prevent discrimination. Those rules are not adequate today.

The need for corrections to price cap regulation is not surprising. When LEC price caps were adopted in mid-1990 this form of regulation was new and largely untested. AT&T had been operating under price caps for only a year. More important, virtually no attention was paid to the fundamental differences between the retail long distance market and the access market. As we discuss below, those differences make price discrimination a much more serious public policy issue in the latter case -- now, and especially in the future.

Price cap rule revisions also are necessary to accommodate other major changes since 1990. Competitive forces are present in some locations but not others, for some services but not others. Widespread deployment of fiber optics has revolutionized the underlying cost characteristics of the local network, bringing incremental costs down to nearly nothing, and heightening the potential for discrimination in how common network costs are recovered.

More fundamentally, the nation has recognized that some of the assumptions underlying the deregulation of the last decade were misplaced, and that the Commission has a continuing role to play where market forces are inadequate. Access pricing is one such area, particularly with respect to discrimination, since it is access pricing that controls who can use the information highway and who cannot. That is why this reevaluation of LEC price caps is so important.

RESPONSE TO NOTICE QUESTIONS

I. GENERAL ISSUES: POLICY GOALS AND DIRECTIONS FOR REGULATION OF LECS

WilTel does not believe it is possible for the Commission to conclude that price cap regulation has improved consumer welfare or economic development compared to what might have occurred in a rate of return environment. We believe that properly enforced rate regulation could have resulted in lower prices than we have seen under price caps. This is particularly so given the interest rate declines that were not captured by the price cap system, and the fact that the Commission still could have required LECs to flow through the declining costs that LECs, like all other segments of the industry, have experienced due to new technology. While we predict that the LECs will kill many trees with reports claiming substantial savings to access users as a result of price caps, the fact remains that access prices remain too high. Similarly, LECs continue to recover vastly different shares of common network costs from different customers, notwithstanding the mandate of Section 202 of the Communications Act.

However, the more important reason that the Commission cannot draw any comfort from the experience to date under price caps is that the market in which those rules operate is in the process of radical change. Most basically, elimination of the equal charge rule just four months ago gave LECs new freedom to discriminate in the recovery of common costs that make up the large majority of interstate access expense. Similarly, the LECs are just now beginning to face serious competition in certain market segments, increasing their incentives to price discriminate among customers. And of course the LECs are looking to enter new markets as competitors of their access customers, increasing their incentives to discriminate.

For all of these reasons, the Commission should resist LEC invitations to "declare victory and go home," leaving the access market without sufficient safeguards. As discussed below, LEC price cap regulation contains serious flaws, flaws that have been less relevant in the past, but that could increasingly endanger diversity and competitiveness in the months and years to come.

A. The Goals of the Price Cap Plan Should Include Promotion of Competition in all Telecommunications Markets and Guaranteeing Open Access to all Telecommunications Networks.

As Vice President Gore commented in a speech last fall, the role of regulators is perhaps most crucial during times of transition like the one that we are about to enter. 1/ The need for protections against price discrimination and anticompetitive conduct by firms that possess market power are greatest when those firms' own monopolies are under attack and where, at the same time, those firms seek to enter markets in which they control access to a necessary input. The LECs are in precisely that position as the FCC embarks upon its four-year review of the price cap plan.

In light of these challenges, the existing goals of LEC price caps should be expanded to include (1) the promotion of diverse competition in all telecommunications markets and (2) the guarantee of open, nondiscriminatory access paths between all end user customers and all competing suppliers of services. If LECs discriminate in pricing the use of those paths by vendors selling services to customers, then the goal of "open access" will not be met from either the customer's or the vendor's point of view. Put another way, price cap rules should foster diversity of choice for consumers, unhindered by discriminatory or uneconomic access pricing.

By ensuring that LECs cannot unfairly price discriminate, the Commission ensures that they cannot use their market power to keep new entrepreneurs from reaching the market with new products that make use of the information highway. Open access must be a two-way street. WilTel is particularly sensitive to this issue because it has been a leader in the development of new technologies and services. For example, WilTel was the first IXC to bring frame relay to market. We are a leader in the distribution of video services, handling major events and routine production requirements of broadcast and cable program networks. But in many cases we have seen our business opportunities stymied --

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1/ Remarks by Vice President Albert Gore at National Press Club, December 21, 1993, at 6.

not by the costs or capabilities of our own network -- but by excessive and discriminatory charges at the local network level, and particularly at the level of the customer loop.

Competitive markets, with open access to all customers for all service providers, will provide the best path to economic growth and widespread access to a diversity of information sources and other services, including health and educational services. WilTel would not expect any party to disagree with these goals. But as discussed below, price cap regulation as currently structured is insufficient to achieve them.

B. Diversity and Competition will Suffer Unless the Price Cap Plan Is Revised to Prevent Price Discrimination.

1. AT&T-style Baskets and Bands Are Not Adequate in the Access Market

In adopting a price cap approach to regulation of dominant carriers, the FCC did not intend to "deregulate profits or any service, or eliminate the relevance of costs to the determination of the justness or reasonableness of rates." 2/ The FCC also meant to "maintain existing policies and rules designed to prevent unreasonable discrimination and to promote competition." 3/

In theory, price cap regulation is supposed to duplicate the effects of a competitive market. It is true that price caps may be effective at giving local exchange carriers incentives to cut costs, and to invest in technology that reduces the cost of providing service. In this sense, price caps may parallel certain

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2/ Policy and Rules Concerning Rates for Dominant Carriers, Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 87-313, 4 FCC Rcd 2873, 2877 (1989) ("AT&T Price Caps Order").

3/ Id., 4 FCC Rcd at 2878.

competitive market forces by spurring LECs to keep overall costs low and to avoid unnecessary investments. Even this conclusion is debatable during this transition period when LECs have competing incentives to build out network and make other investments to prepare for competition.

But in any event, price caps baskets and bands do not duplicate the pressures on pricing and on price relationships that would prevent unreasonable discrimination in a competitive marketplace. On the contrary, because price cap regulation severs the link between cost and price, it gives the LECs substantial flexibility to depart from the cost-based rates and rate relationships one would expect to see in a competitive market, and recover costs as the LEC wishes. Thus, where the LEC has incentives to discriminate, it has the ability to do so.

As price caps was originally envisioned, the Commission theorized that once all services were subject to price caps, the LECs would have little incentive to raise prices on less competitive services because they would have to lower prices on other services to obtain the necessary "headroom." Price cap baskets and bands would, in theory, constrain prices for services where the incentives to engage in strategic pricing could lead the LECs to manipulate prices in an anticompetitive way. 4/

The fundamental flaw of LEC price caps is its failure to adequately appreciate how such access discrimination can poison the competitiveness of other markets, and hence why stronger measures are necessary to prevent access

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4/ Rates for DS3 and DS1 special access services, for which the LECs faced the greatest degree of competition and potential competition at the time the LEC price cap plan was adopted, were therefore subjected to banding restrictions under the original price cap plan. Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, CC Docket No. 87-313, 5 FCC Rcd 6786, 6813 (1990), aff'd, National Rural Telecommunications Ass'n v. FCC, 988 F.2d 174 (D.C. Cir. 1993).

discrimination. Essentially, this basket and bands approach was the same mechanism for preventing discrimination that the Commission had adopted a year earlier for AT&T. The Commission implicitly assumed that the same price cap rules were appropriate for all dominant carriers. The Commission failed to consider basic differences between the access and long distance markets, differences that make discrimination a much more serious problem in the case of access, and therefore require different structural responses. 5/ For example, the Commission did not recognize that:

(1) Access is the largest cost element of another product (interexchange service), so discrimination in access pricing directly distorts that market. In contrast, long distance is generally a minor element of a business's cost of production or a consumer's budget. Thus, access discrimination does far more damage to the downstream IX market than retail price discrimination by AT&T does to any other market. 6/

(2) The access market is characterized by only a few purchasers, including one that controls approximately 65% of total demand. In contrast, the long distance market is characterized by an enormous number of customers, each purchasing a relatively trivial percentage of total output. Yet the LEC price cap rules were adopted without any discussion of the existence of AT&T's monopsony power.

5/ Even the Notice itself continues to cite AT&T-sponsored information from 1987 supporting price caps for that company without recognizing that such information is not necessarily relevant to the access market. See Notice at 5, n.5.

6/ See Katz, Michael L., "The Welfare Effects of Third Degree Price Discrimination in Intermediate Good Markets," American Economic Review, March 1987, at 154.

(3) Discrimination in the long distance market is checked because competitive entry is simple, and the Commission generally has fostered a policy of requiring AT&T to permit new entrants to resell its services. 7/ Yet the LEC price cap rules were adopted without recognizing that these same conditions did not exist in the local market. 8/

(4) AT&T's initial rates under price caps inherently contained less discrimination because those rates had been subject to competition and resale. Thus, the Commission risked less by using those rates as the starting point for price caps. But LEC access rates had never been investigated for discrimination, either implicitly by market resale pressures, or expressly by the Commission.

(5) Finally, yet most importantly, even under price caps AT&T's services were subjected to a competitive process to detect and correct any discrimination that may have be found in its initial rates. <u>No such process exists for LEC access services.</u> As noted in our introduction, most elements of switched access service are not structurally compatible with a competitive environment because the "access customer," the interexchange carrier, is generally not the entity which decides the "access supplier." Unlike the AT&T retail markets, where price caps were used to <u>complement</u> the competitive process, LEC price caps are a substitute for competition. And, as a <u>substitute</u> for competition, the conventional

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7/ Although this resale has somewhat limited AT&T's ability to price discriminate among customers, it is not coincidental that disputes over the availability of AT&T Tariff 12 and contract tariffs for resale have been the principal policy problem for the Commission in the long distance market.

8/ Entry is limited or forbidden in most market segments. And where competition is allowed it is relatively easy for LECs to discriminate in favor of AT&T through volume discounts for "generally available" services that in practice only AT&T has the traffic volumes to justify.

price cap tools of baskets and bands are inadequate to guard against discrimination.

Presumably the Commission overlooked these differences out of a view that price caps at least would encourage LECs to reduce costs, and that as a result long distance companies would see overall reductions in access. The Commission may have been of the view that access price discrimination among IXCs -- serious as that would be --was less likely to occur because LECs faced no competition, and hence arguably had the ability to ignore AT&T's monopsony power or other incentives to discriminate. The "equal charge" rule also was relevant because it distributed responsibility for most LEC common costs equally across all IXCs, leaving a relatively small opportunity for discrimination.

However, even during this initial period when LECs have faced fewer incentives to discriminate, price caps have been unsuccessful. First, as noted above, the Commission did not affirmatively find that the individual rates going into price caps were reasonable and nondiscriminatory. Thus, any imperfections in those rates were carried into price caps. Second, even if the initial price cap rates had been nondiscriminatory, over time price caps permitted LECs to raise and lower rates in such a way as to create unreasonable discrimination. Third, to the extent overall earnings are above a cost-based level, as they have been for most of the price cap LECs during the past few years, the LECs have had substantial flexibility to lower rates for services that face competition without facing economic penalty. This "cushion" allows LECs to chill entry into newly competitive markets by leaving prices high in other market segments.

In any event, whatever the merits of the Commission's original decision to discount the danger of LEC access discrimination in 1990, that decision clearly must be reconsidered here. In fact, precisely because LEC services are beginning to be subject to varying degrees of competition, LECs have even greater incentives under price caps to discriminate in favor of customers that have competitive alternatives, while pricing higher to those who lack such alternatives. These matters are discussed further below.

2. The Cost Characteristics of a Fiber Network Make Discrimination A Particularly Serious Risk

Discrimination is a particularly serious problem in today's telecommunications world given the cost characteristics of the local telephone network. That network is increasingly composed of extremely high capacity fiber optic transmission facilities and large, multi-purpose digital switches. Fiber-based telecommunications exhibits a production cost characteristic that is virtually unique: high construction costs, significant common overhead costs, but minimal variable costs.

Access rates become the interexchange carrier's variable costs of using a fiber-based network. Once fiber is installed, its capacity can be expanded almost indefinitely to accommodate a large galaxy of diverse new "marginal" uses -- but only if access to the local network is priced so that it does not discriminate unfairly against the entrepreneurs who are most likely to develop those new products and services for consumers. Undoubtedly those diverse new uses could prove as important to enhancing the life of Americans as the basic telephony services whose network they share. 9/

From a regulatory perspective, the central question should be how to recover the common local network costs equally among all competitors in the same market so that access prices do not distort that market. The Commission should consider the cost characteristics of the local network, including the large percentage

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9/ See Comments of WilTel, Inc., in CC Docket No. 91-213 (filed Feb. 1, 1993) for a full discussion of this point.

of non-variable costs, and then develop pricing rules that liberate both large and small firms to develop new uses that take advantage of the low marginal network costs.

The central objective should be pricing rules that recover common costs equally from all users in a market on a non-discriminatory basis. Unless the Commission adopts such pricing rules, LECs will have power to choose market winners and losers by pricing access to some services (including their own) to recover only incremental costs, while pricing other services at levels intended to recover all the shared costs of the network. We propose several rules in our comments below that would alleviate these risks while preserving the essential structure of the price cap plan.

3. Access Discrimination Will Be More Dangerous to Competition in the Future

Even accepting that the original price cap plan was adequate to meet the risks of price discrimination and cross-subsidy four years ago, its minimal protections -- the price cap baskets and bands and the new services test -- clearly will be inadequate to prevent such risks in today's marketplace and in the future. In 1990, few LEC services, other than special access, faced competition. The BOCs also were not allowed to participate in most telecommunications markets outside of local exchange service, exchange access, and intraLATA toll, each of which, for the most part, were legal monopolies in 1990. 10/

Today, the BOCs are authorized to provide information services and are pressing the Congress and the courts for authority to provide interLATA and

10/ The exception, intraLATA toll, has been characterized by a variety of competitive issues -- imputation, expanded local calling and dialing parity -- that are beyond corrective abilities of a price cap regime. This experience demonstrates the inherent inadequacy of price caps as a comprehensive regulatory structure.

cable television services. More generally, LECs are preparing for an environment in which they plan to offer "full-service" telecommunications packages to consumers in competition with long distance and information services companies. It is absolutely critical in these circumstances to ensure that the price cap rules properly bound LEC pricing flexibility to prevent anti-competitive discrimination.

Meanwhile, discrimination concerns also have increased since 1990 due to the beginnings of local service competition. The FCC has ordered expanded interconnection with LEC central offices and permitted competition for dedicated switched transport. Whether through an Act of Congress, or on a state-by-state basis, remaining legal barriers to entry into local exchange markets are under pressure. WilTel is skeptical as to how rapidly or broadly local competition actually will develop. But the relevant fact is that LECs are preparing now to meet that possible competitive challenge. The best way to meet this new competition, as the LECs themselves acknowledge, will be through strategies that reduce prices to meet competition where it exists, while keeping prices high in non-competitive market segments.

Moreover, for the foreseeable future new local service providers will continue to depend on LEC-provided access services to reach all customers and to terminate traffic ubiquitously. LECs will have powerful incentives to discriminate in favor of themselves and against competitors in access pricing. Mechanisms such as volume discounts, for example, if not cost-based, can be effective vehicles for anticompetitive pricing and for cross-subsidy.

The incentive and ability of the LECs to engage in price discrimination and to do so in a way that harms competition, is therefore far greater today than it was in 1990, and will become even more of a threat in the future. We recognize that LECs will increasingly face pressure in certain parts of the local market, particularly the market for dedicated interoffice channels and high capacity channel terminations. We do not oppose giving the LECs reasonable flexibility to respond to that competition -- and we have supported zone pricing for that purpose. But this increasing competition in this submarket only dramatizes the absence of competition in other markets such as tandem switched service -- and dramatizes why LECs will have both the incentive and the ability to discriminate against captive markets in the future. This problem was not addressed in the original LEC price cap rules. Nor was it addressed in modifications to those rules, such as the recent changes concerning access transport service. It must be addressed now.

We propose specific revisions to the price cap plan below that will help the Commission to accomplish the following goals while retaining the basic structure of price cap. The Commission should:

- Ensure that overall price cap rate levels are reasonable.
- Ensure that overheads are uniformly recovered across all services.
- Use excess revenues to correct discrimination in existing rates.
- Revise the test applicable to new services so that prices are more cost-based and less discriminatory.
- Keep price cap protections in place even after local competition is established.

II. BASELINE ISSUES

Baseline Issue 1(a): Infrastructure Development

A. The FCC Should Promote Infrastructure Development By Guaranteeing Open Access to LEC Networks at Nondiscriminatory Rates.

As a company that has been a leader in the deployment of new communications infrastructure, WilTel generally supports the goal of encouraging

LECs to improve the local network. Our frustration with the quality and price of LEC access, particularly for our video services, is a matter of record. Our interexchange network is ready; we are waiting on the LECs. That said, however, the Commission should recognize that it would be counterproductive to encourage LEC infrastructure investment if the LECs then are allowed to discriminate in the pricing of the new network facilities. It matters little to us whether cost-efficient access is unavailable to us because it has not been constructed by the LEC, or because the LEC prices it in a discriminatory or excessive fashion. The result is the same.

In short, the Commission is correct that it can somewhat enhance the development of the national information infrastructure through the price cap rules -- but it must make those rules address the problem of discrimination in the pricing of access required for the use of the network. The Commission should reject out of hand offers by the LECs to build infrastructure in exchange for deregulation that would allow them to exploit that investment on an anticompetitive basis. This is particularly true given that in most cases that investment would be paid for by captive ratepayers including IXCs and other access customers who will remain captive of the LECs even in a "local competition" environment.

Baseline Issue 1(b): Universal Service

B. Universal Service Should Be Fostered Through Non-discriminatory Programs Developed Outside this Proceeding.

The FCC also properly should be concerned with the goal of preserving universal service. WilTel agrees that it is a worthy goal and that all telecommunications service providers should be required to contribute to its support. Any subsidy or contribution mechanisms should be developed independently of this price cap review proceeding, however. Universal service issues are much too complex and data-intensive to be resolved in this docket, whose purpose is simply to evaluate the success of the LEC price cap plan and to refine the plan based on that evaluation. Whatever universal service mechanism is ultimately developed can be folded into price caps at a later time, if necessary and appropriate.

We note that WilTel has not stated its full position on universal service in these comments. We simply emphasize here that any subsidies that are eventually identified for universal service must be recovered in a nondiscriminatory, competitively neutral, manner and be based on objectively identifiable subsidy elements. If they are not, LECs will be able to load universal service subsidies on a small class of customers. The present price cap plan does not identify those amounts nor does it recover any such subsidies in a competitively neutral manner.

Baseline Issue 2: Composition of Baskets and Bands.

C. Price Cap Baskets and Bands Are Not an Adequate Defense Against Price Discrimination.

As discussed above, the existing price cap system of baskets and bands does not live up to the theoretical promise as described in the Price Cap Notice. 11/ LEC price cap baskets and bands do not significantly constrain LEC ability to offset price decreases for more competitive services with price increases for less competitive services.

11/ See Notice at para. 38.